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Supreme Court, U.S.
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No. _____

In The

Supreme Court of the United States

October Term, 1996

BRADLEY KENT KNOX,

Petitioner,

v.

STATE OF NEVADA, DEPARTMENT OF MOTOR VEHICLES AND PUBLIC SAFETY,

Respondent.

On Petition For Writ Of Certiorari To The Supreme Court Of The State Of Nevada

PETITION FOR WRIT OF CERTIORARI

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15 pp

QUESTION PRESENTED

Can the state forfeit an individual's driver's license in a separate civil proceeding under the guise of protecting the public when the forfeiture is based solely on the finding of guilt in a criminal action where the person has already been punished without violating the double jeopardy clause of the Fifth Amendment of the United States Constitution?

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PETITION FOR WRIT OF CERTIORARI

BRADLEY KENT KNOX ("Bradley") respectfully prays that a writ of certiorari issue to review the judgment and opinion of the Nevada Supreme Court entered in this proceeding March 27, 1997, in order to prevent the State, Department of Motor Vehicles and Public Safety [DMV] from forfeiting "Bradley's" driver's license in violation of the double jeopardy Clause of the Fifth Amendment of the United States Constitution.

OPINIONS BELOW

The Decision of the Nevada Supreme Supreme Court that gives rise to this Petition is an unpublished order dismissing appeal. It is reprinted in Appendix to ("App.") at Pages 1-4.

JURISDICTION

The jurisdiction of the Court is invoked pursuant to 28 U.S.C. Sec. 1257(3). Certiorari is available for " . . . any right. . . . claimed under the Constitution . . . ".

Review should be granted under Supreme Court Rule 10(c) because the Nevada Supreme Court decided an important federal question regarding double jeopardy that has not been settled by this Court but should be. All fifty states are affected by the issue presented here.

STATUTES INVOLVED IN THIS CASE

NRS 483.460(1)(b)(5):

> 1. Except as otherwise provided by statute, the department shall revoke the license, permit or privilege of any driver upon receiving a record of his conviction of any of the following offenses, when that conviction has become final, and the driver is not eligible for a license, permit or privilege to drive for the period indicated: . . .
>
> (b) For a period of 1 year if the offense is:
>
> (5) A second violation within 7 years of NRS 484.379 and the driver is not eligible for a restricted license during any of that period.

NRS 484.3792:

> 1. A person who violates the provisions of NRS 484.379:
>
> (a) For the first offense within 7 years, is guilty of a misdemeanor. Unless he is allowed to undergo treatment as provided in NRS 484.3794, the court shall:
>
> (1) . . . , order him to pay tuition for an educational course on the abuse of alcohol and controlled substances approved by the department and complete the course within the time specified in the order, and the court shall notify the department if he fails to complete the course within the specified time;
>
> (2) . . . , sentence him to imprisonment for not less than 2 days nor more than 6 months in jail, or to perform 48 hours of work for the community while dressed in distinctive garb which identifies him as having violated the provisions of NRS 484.379; and

(3) Fine him not less than $200 nor more than $1,000.

. . .

STATEMENT OF THE CASE

The Petitioner, BRADLEY KENT KNOX, hereinafter "Bradley", was arrested for driving under the influence of intoxicating liquor (DUI), and subsequently charged by criminal complaint. A plea negotiation was entered into between "Bradley" and the City of Las Vegas whereupon he pled guilty to a DUI first offense.[1] He was punished by the trial court according to law.[2] In addition to the penalties imposed in the criminal forum, the State, Department of Motor Vehicles and Public Safety [DMV] instituted a separate revocation action resulting in "Bradley's" driver's license being taken away for one year.[3] The revocation order was upheld by the district court.

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[1] "Bradley" pled to a DUI first offense but the Department of Motor Vehicles and Public Safety treat it as a second offense for purposes of the license revocation. See *Yohey*, infra.

[2] "Bradley" was sentenced as follows: **A.** $200 Fine + $65 Administrative Assessment; **B.** 24 hours in jail (with credit for 24 hours served); **C.** Perform 24 hours of community service; **D.** Attend and successfully complete and pay the ($200) tuition for the alcohol and substance abuse educational course. The court did not order "Bradley's" driver's license revoked.

[3] The penalty for driving on a revoked license is severe. See **NRS 483.560**. (" . . . he shall be punished by imprisonment in jail for not less than 30 days nor more than 6 months, and by a fine of not less than $500 nor more than $1,000.") Also, the person's license is revoked for an additional year.

"Bradley" appealed to the Nevada Supreme Court alleging a double jeopardy violation. His request for relief was denied. The state supreme court opined that the administrative revocation of a driver's license was not punishment and therefore concluded that the double jeopardy clause of the United States Constitution was not triggered. The instant request for relief has been filed in this Court.

REASONS FOR GRANTING THE WRIT

I. The Nevada Supreme Court's Opinion Upholding The One Year Revocation Of "Bradley's" Driver's License Is Erroneous And Violates The Double Jeopardy Clause Of The Fifth Amendment Of The United States Constitution.

The Double Jeopardy Clause of the Fifth Amendment to the United States Constitution provides that no person shall be "subject to the same offense to be twice put in jeopardy of life or limb." **U.S. Const. Amend. V.** Individuals are protected against multiple prosecutions and/or *punishments* for the same conduct. *North Carolina v. Pearce*, 335 U.S. 711, 717, 89 S.Ct. 2072, 2076 (1969). Citizens of Nevada are afforded protection against double jeopardy violations through the Fourteenth Amendment of the United States Constitution. *Id.* at 2076; *Benton v. Maryland*, 395 U.S. 784, 89 S.Ct. 2056 (1969); *DeSimone v. State*, 111 Nev. 1221, 1224, 904 P.2d 1 (1995). This constitutional protection applies with equal force in civil proceedings. *United States v. Halper*, 490 U.S. 435 (1989). Most recently, the United States Supreme Court in *U.S. v. Ursery*, ___

U.S. ___ (Nos. 95-345, 346) (decided 6/24/96) 59 CrLR 2191 (1996) held that the Double Jeopardy Clause can apply to *in rem* civil actions.[4] In footnote 3 of the majority opinion, it reads,

> JUSTICE STEVENS mischaracterizes our holding. We do not hold that *in rem* civil forfeiture is *per se* exempt from the scope of the Double Jeopardy Clause. See *Post* at 5-9. Similarly, we do not rest our conclusion in this case upon the long-recognized fiction that a forfeiture *in rem* punishes only malfeasant property rather than a particular person. See *Post*, at 18-21. That a forfeiture is designated as civil by Congress and process *in rem* establishes a presumption that it is not subject to double jeopardy. See, e.g., *United States v. One Assortment of 89 Firearms*, 463 U.S. 354, 363 (1984). Nevertheless, where the "clearest proof" indicates that an *in rem* civil forfeiture is "so punitive either in purpose or effect" as to be equivalent to a criminal proceeding, that a forfeiture may be subject to the Double Jeopardy Clause.
>
> *Id.* at 365.

In the present case, the Double Jeopardy Clause was triggered. A forfeiture of a person's driver's license by

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[4] It appears that an administrative driver's license revocation is an *in personam* proceeding. **Black's Law Dictionary** (6th Ed.). It is highly unlikely that the state is seeking to obtain the plastic license itself, but rather is more concerned with removing "Bradley's" lawful ability to drive. An *in personam* classification favors the Petitioner here. *Ursery* limited the holdings in *Halper*, supra, *Austin v. United States*, 509 U.S. 602 (1993), and *Montana, Dept. of Revenue v. Kurth Ranch*, 511 U.S. ___, 114 S.Ct. 1937 (1994) to *in personam* civil penalties.

the state administrative action under the drunk driving laws is punishment.

In *Zamarripa v. District Court*, 103 Nev. 638, 747 P.2d 1386 (1987), the court had occasion to discuss the administrative driver's license revocation which resulted from a drunk driving conviction and noted that the revocation was a penalty.

> Nevada statutes provided that persons convicted of driving while intoxicated forfeit their driving privileges. The legislature has found it necessary to mandate the 30 day penalty for driving with a revoked license in order to deter those who consciously ignore *the penalty – license revocation – which was imposed for driving under the influence*. (Emphasis added).
>
> *Id.* at 542.

In the same year, the Nevada Supreme Court made clear that the administrative license revocation was not imposed by the court but rather involves a separate civil action by the state. In *Yohey v. State, Dept. of Motor Vehicles*, 103 Nev. 584, 747 P.2d 238 (1987), citing *State v. Parker*, 336 P.2d 318, 320 (1959), the court stated,

> The revocation of driver's license or driving privilege is not a part of the penalty provided for violation of the statute. The deprivation of the driving right or privilege is for the protection of the public, and is not done for the punishment of the individual convicted. *Moreover, the revocation is not by the court in which the conviction occurs, but is by the commissioner of law enforcement, in pursuance of regulations and conditions imposed upon the exercise of the driving right*

> *or privilege, under the police power of the State.* (Emphasis added).
>
> *Id.* at 587.

Clearly, "Bradley"was punished twice for the same conduct in violation of the Double Jeopardy Clause.[5]

CONCLUSION

For the foregoing reasons, the petition for writ of certiorari should be granted.

Respectfully submitted,

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[5] At the end of the revocation period, the individual is free to drive whether he can safely do so or not. Therefore, any argument that the license revocation is "remedial" and not punishment must fall upon deaf ears. It should be noted that the administrative driver's license revocation is not based on the person's inability to drive safely but only on the fact that he has been convicted of drunk driving in the trial court.

IN THE SUPREME COURT OF THE STATE OF NEVADA

BRADLEY KENT KNOX, NO. 26237

Appellant,

vs.

THE STATE OF NEVADA, DEPARTMENT OF MOTOR VEHICLES AND PUBLIC SAFETY,

Respondent.

ORDER DISMISSING APPEAL

(Filed March 27, 1997)

This is an appeal from an order of the district court denying appellant's petition for judicial review of the administrative revocation of his driver's license for one year following his second criminal conviction for DUI.

Appellant contends that the revocation of his driver's license following his conviction for DUI constitutes punishment and violates the Double Jeopardy Clause of the Fifth Amendment. This court has consistently held that statutes within the license revocation scheme are not penal. *See, e.g.*, State, Dept of Mtr. Vehicles v. Binder, 109 Nev. 945, 949, 860 P.2d 163, 166 (1993). "The objective of administrative revocation of a driver's license under NRS 483.460 is not to impose additional punishment but to protect the unsuspecting public from irresponsible drivers." Yohey v. State, Dep't Motor Vehicles, 103 Nev. 584, 587, 747 P.2d 238, 240 (1987). Accordingly, we conclude that the revocation of appellant's driver's license was not barred by the Double Jeopardy Clause.

Appellant next contends that the DMV was bound by the terms of appellant's plea agreement, under which appellant's second conviction for DUI was treated as a first offense for sentencing purposes. Appellant contends that the DMV was required to treat appellant's second conviction as a first offense, and was precluded from revoking appellant's license for a one-year period based on appellant's second conviction for DUI within seven years. *See* NRS 483.460. We conclude that appellant's contention lacks merit.

In *Yohey*, this court held:

> [NRS 483.460] imposes upon the department a mandatory duty to revoke an individual's driver's license for one year upon the existence of three factors: (1) the department must receive valid record of conviction; (2) these records must show that the individual was convicted twice within seven years for violating NRS 484.379 (DUI); and (3) the convictions must be final.
>
> . . . .
>
> Nothing in the statute grants the department, expressly or impliedly, any discretion in revoking a driver's license. Once the department received and determined the authenticity of appellant's conviction records, it performed a purely ministerial function in revoking appellant's driver's license.

Yohey, 103 Nev at 586-87, 747 P.2d at 239; *see also* State, Dep't Of Mtr. Vehicles v. Madrigal, 110 Nev. 1005, 879 P.2d 746 (1994).

The Legislative intent to protect the public from irresponsible drivers "would not be served by an interpretation of the statute which makes public protection dependent upon whether a prosecutor, in a criminal proceeding, chooses to plead and prove the prior offense." Baldwin v. Department of Motor Vehicles, 42 Cal. Rptr. 2d 422, 425 (Ct. App. 1995) (citing Pollack v. Department of Motor Vehicles, 696 P.2d 141, 149 (Cal. 1985)). The DMV's Duty is "to suspend or revoke a license based on the fact of convictions, and not on how offenders can be, or are, sentenced in the criminal courts." *Id.* (Citing Vary v. Forrest, 247 Cal. Rptr. 873, 878 (Ct. App. 1988)). We conclude that the DMV was not bound by the terms of appellant's plea agreement, and the district court did not err in affirming the DMV's revocation of appellant's driver's license pursuant to NRS 483.460. Accordingly, we

ORDER this appeal dismissed.[1]

/s/ Shearing, C.J.
Shearing

/s/ Springer, J.
Springer

/s/ Rose, J.
Rose

/s/ Young, J.
Young

/s/ Maupin, J.
Maupin

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[1] Cause appearing, we grant appellant's motion to file supplemental authorities, and we direct the clerk of this court to file appellant's supplemental authorities pursuant to NRAP 31(d).

CC: Hon. Lee A. Gates, District Judge
Hon. Frankie Sue Del Papa, Attorney General
Matthew T. Dushoff, Deputy Attorney General
John G. Watkins
Loretta Bowman, Clerk